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Edited by James Devenney and Mel Kenny

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## EUROPEAN CONSUMER PROTECTION

This volume analyses the theory and practice of European consumer protection in the context of consolidation initiatives seen, *inter alia*, in the revision of the consumer *acquis*, the Draft Common Frame of Reference and the proposal for an EU Consumer Rights Directive. The issues addressed are all the more significant given the passage of the Consumer Rights Directive, the appointment of an Expert Group on a Common Frame of Reference, the Commission's 2010 Green Paper on progress towards a European Contract Law and the proposal for a Common European Sales Law. The contributions to this volume point to the arrival of a contested moment in EU consumer protection, questioning the arrival of the 'empowered' consumer and uncovering the fault lines between consumer protection and other goals. What emerges is a model of polycontextual EU consumer protection law, a model that challenges the assumptions in both the 2010 Green Paper and more recent initiatives.

JAMES DEVENNEY is Professor of Commercial Law at the Law School, University of Exeter.

MEL KENNY is Reader in Commercial Law at Leicester Law School.

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Theory and Practice

Edited by  
JAMES DEVENNEY  
and  
MEL KENNY



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## PREFACE

This book emanates from a duo-colloquium – Consumer Protection in Europe: Theory and Practice – hosted by the Centre for European Law and Legal Studies at Leeds University, in association with the Institute of Commercial and Corporate Law at Durham University, in December 2009. That conference, which has also given rise to a second edited collection (*Consumer Credit, Debt and Investment in Europe* (Cambridge University Press, 2012)), explored consumer protection in Europe in the context of the then proposed Consumer Rights Directive,<sup>1</sup> efforts to consolidate the consumer *acquis*<sup>2</sup> and the Draft Common Frame of Reference.<sup>3</sup> The issues explored by that conference are even more relevant today given, for example, the passage of the Consumer Rights Directive, the Commission's appointment of an Expert Group on a Common Frame of Reference in the area of European contract law,<sup>4</sup> the Commission Green Paper on policy options for progress towards a European Contract Law for consumers and businesses,<sup>5</sup> and the proposal for a Common European Sales Law (CESL).

The conference was the second in a series of events organised within the work programme 'Credit and Debt: Protecting the Vulnerable in Europe', a project placing special emphasis on vulnerability in financial transactions and then based at the Centre for European Law and Legal Studies at Leeds Law School. The project owes its genesis to work originally organised under the umbrella of the Commission's Sixth Framework Programme (FP6) on the protection of vulnerable family

<sup>1</sup> Available at [http://ec.europa.eu/consumers/rights/docs/COMM\\_PDF\\_COM\\_2008\\_0614\\_F\\_EN\\_PROPOSITION\\_DE\\_DIRECTIVE.pdf](http://ec.europa.eu/consumers/rights/docs/COMM_PDF_COM_2008_0614_F_EN_PROPOSITION_DE_DIRECTIVE.pdf).

<sup>2</sup> On which see, for example, B. Heiderhoff and M. Kenny, 'The Commission's 2007 Green Paper on the Consumer *Acquis*: Deliberate Deliberation?' (2007) 32 *ELR* 740.

<sup>3</sup> See C. von Bar and E. Clive, *Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR)*, (Oxford University Press, 2010).

<sup>4</sup> See Commission Decision 2010/233/EU; [2010] OJ L 105/109.

<sup>5</sup> See European Commission, Green Paper from the Commission on policy options for progress towards a European Contract Law for consumers and businesses, COM (2010) 348 final.

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sureties. This was an ambitious transfer of knowledge project coordinated by Dr Aurelia Colombi Ciacchi, who was then at the Centre for Law and Politics at Bremen University, and Professor Stephen Weatherill at the Institute of European and Comparative Law at Oxford. It was only logical to develop some of the ideas which can be traced to that original research in Bremen – with the valuable collaboration of Professor Gert Brüggemeier (Bremen), Professor Gerry McCormack (Leeds) and Professor Sjef van Erp (Maastricht) – in this project.

The collection is divided into three parts. Part I casts a critical light over consumer protection strategies and mechanisms in the EU, with particular emphasis on the rationales (and bases) for EU consumer protection law, effective enforcement, the modernisation agenda in European private law, the post-Lisbon policy matrix and the constitutionalisation of consumer protection. Part II deals with concepts of vulnerability in the context of consumer protection and critically explores responses to vulnerability in this context. This part poses, illuminates and seeks to resolve key questions about the proper scope of European consumer protection law. Part III contextualises various aspects of European consumer protection law. This part integrates perspectives from private international law, historical analysis of consumer protection in action, critical analysis of the role of private litigation in market regulation, public law influences on consumer protection standards, and the citizenship implications of consumer protection. Thus intriguing insights are offered as to aspects of consumer protection in individual Member States.

This collection, and the conference from which it emanates, would not have been possible without the generous support it has received from Marie Curie research funds through the European Commission (European Reintegration Grant 223605) within the Seventh Framework Programme (FP7). In Brussels we are grateful to the assistance and support of Pascale Dupont, Chantal Huts and Laurent Correia, our FP7 project officers. We are also indebted at an institutional and material level to the Institute of Corporate and Commercial Law at Durham and to the Centre for European Law and Legal Studies at Leeds. In this regard our special thanks are due to Professor Dagmar Schiek at the Centre for European Law and Legal Studies for her support of this event.

We are also indebted to all those who submitted proposals, held papers, chaired sessions and made contributions to the conference and to this volume. In particular we are grateful to Dr Orkun Akseli

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(Durham), Professor Cristina Amato (Brescia), Dr Rodica Diana Apan (Baia Mare), Professor Immaculada Barral-Vinals (Barcelona), Christopher Bisping (Leicester), Dr Sarah Brown (Leeds), Andrew Campbell (Leeds), Dr Olha Cherednychenko (Amsterdam), Jim Davies (Northampton), Karen Fairweather (Queensland), Marine Friant-Perrot (Nantes), Dr Amandine Garde (Durham), Dr Lorna Gillies (Leicester), Professor Axel Halfmeier (Leuphana University Lüneburg), Professor Roger Halson (Leeds), Professor Geraint Howells (Manchester), Dr Monika Jagielska (Katowice), Dr Mariusz Jagielski (Katowice), Howard Johnson (Cardiff), Professor Andrew Keay (Leeds), Dr Alan Littler (Tilburg), Dr Vanessa Mak (Tilburg), Martin Morgan-Taylor (De Montfort), Dr David Pearce (Leeds), Sarah Nield (Southampton), Dr Chiara Perfumi (Brescia), Dr Cristina Poncibò (Turin), Catherine Garcia Porras (Rotterdam), Norbert Reich (Bremen), Dr Christine Riefa (Brunel), Professor Peter Rott (Copenhagen), Professor Dagmar Schiek (Leeds), Bastian Schüller (Oslo), Professor Christian Twigg-Flesner (Hull), Dr Warren Swain (Queensland), Blanka Tomančáková (Palacky), Professor Chris Willett (Essex), Dr Paul Wragg (Leeds), Professor Willem van Boom (Rotterdam).

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Since the organisation of this conference and the publication of this collection, we have both moved to new pastures: Mel to found the Research Group on Credit, Debt and Consumer Protection at Leicester University and James to a Chair in Commercial Law at the University of Exeter. Information on the ongoing work and forthcoming events under the project can be obtained from the editors.

This collection is dedicated to our parents.

*Mel Kenny and James Devenney*

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